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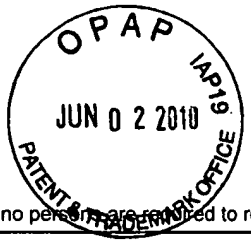

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)	
RYM-36-1994	

Application Number	Filed
10/585,890	July 12, 2006
First Named Inventor	
TATESON	
Art Unit	**Examiner**
2863	Sujoy K. KUNDU

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ Applicant/Inventor

☐ Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96)

☒ Attorney or agent of record 41,426 (Reg. No.)

☐ Attorney or agent acting under 37CFR 1.34.
Registration number if acting under 37 C.F.R. § 1,34 _____

Signature

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Typed or printed name

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Requester's telephone number

June 2, 2010
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*

☒ *Total of 1 form/s are submitted.

STATEMENT OF ARGUMENTS FOR PRE-APPEAL REVIEW

The following listing of clear errors is responsive to the Final Rejection mailed March 3, 2010.

The Final Rejection fails to establish that claims 1, 4-10 and 13-17 are anticipated under 35 U.S.C. §102 by Wan (U.S. '024).

Anticipation under Section 102 of the Patent Act requires that a prior art reference disclose every claim element of the claimed invention. See, e.g., *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1574 (Fed. Cir. 1986). Wan fails to disclose every claim element of the claimed invention. For example, Wan fails to disclose "means for determining the values of the property being measured by devices similar to said sensor device; and means for adjusting the periodicity of measurement according to the values the sensor has measured and the measured values received from the devices similar to said sensor device," as required by independent claim 1 and its dependents. Wan also fails to disclose "transmitting the values of the property being measured by each device from each device to one or more other devices, and adjusting the periodicity of measurement of each device according to the values it has measured and the values it has received from the one or more other devices," as required by independent claim 10 and its dependents.

Independent claims 1 and 10 require that a sensor device determines the values of the property being measured by similar devices. The Final Rejection alleges that the claimed sensor device is disclosed by Wan's mobile device.

The Final Rejection (page 2, last lines) alleges "One ordinary skilled in the art *could* relate base stations and mobile units are similar devices because both deal with communications." Applicant respectfully disagrees with this allegation.

First, the Final Rejection does not even allege that base stations and mobile devices are similar devices. The Final Rejection (page 2, last lines) merely alleges that "One ordinary skilled in the art *could* relate base stations and mobile units are similar devices...." This allegation is thus clearly based on hypothetical conjecture that is not factually supported at all. That is, there is no factual basis for the allegation that base stations and mobile units "could" be similar devices, let alone are similar devices.

Second, as explicitly stated by MPEP 2111, "During patent examination, the pending claims must be 'given their broadest reasonable interpretation *consistent with the specification (emphasis added).*'" Based on the specification, one of ordinary skill in the art would have concluded that base stations and mobile units are not similar devices. For example (but without limitation), page 7 of the

specification discusses *differences* between base stations (i.e., which are fixed stations) and mobile units as follows (emphasis added):

> The destination 90 is a fixed receiver station, which will be referred to as an information "sink", and which collects data collected by the mobile terminals 10, 20, 30 etc for subsequent processing. There may be more than one sink in the network. *The sink device 90 is more powerful than the sensor devices 10, 20 30 etc, both in terms of processing capability and power-consumption, and either have long-term storage facilities for the data, or a long-range transmission link 98 to a data-processing centre 99. The sensor devices 10, 20, 30 themselves have very limited battery power (allowing only short-range wireless transmissions), small processors and limited memory.* In operation, each device is allocated a status value which is determined in accordance with the amount of data in its buffer store, the remaining battery life and the positions of neighbouring devices, data being forwarded from one device to another if the difference in status value exceeds a threshold.

Accordingly, when the pending claims are given their broadest *reasonable* interpretation *consistent with the specification*, base stations and mobile units are not "similar" devices. Any interpretation to the contrary is inconsistent with the specification, as well as inconsistent with the teachings of Wan and understanding by those skilled in the art.

Third, the allegation the base stations and mobile units are similar devices just (i) because both generally "deal with communications" (see page 2, last two lines and page 7, line 5 of the Final Rejection) or (ii) because they "could be similar in color, or the apparatus could be constructed using similar materials" (page 7, lines 6-7 of the Final Rejection) is unfounded. A base station and a mobile unit are clearly not interchangeable with each other as they perform different functions. Wan's teachings regarding his base station 104 and mobile unit 106 (see pgs. 1-2 of Wan) suggest that Wan's base station 104 and mobile unit 106 perform different functions and are not interchangeable. Tellingly, Wan's base station 104 and (hand-held) mobile unit 106 even look different and have dramatically different physical parameters -- as can be appreciated from Fig. 1 (reproduced below) of Wan.

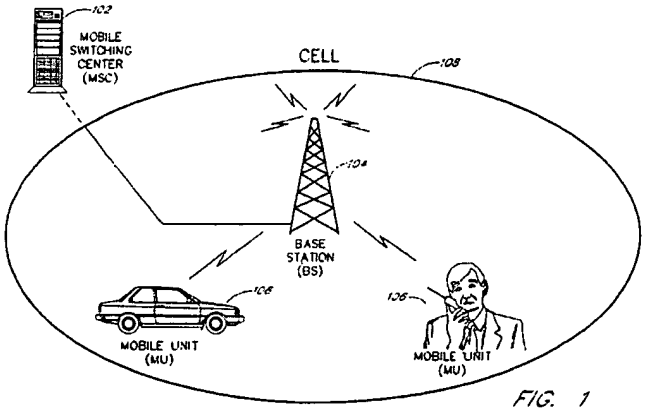

FIG. 1

The vastly different functions and dramatically different physical parameters between the base station 104 (i.e., a towering antenna as shown in Fig. 1 of Wan) and the mobile unit 106 (e.g., a hand-held phone as shown in Fig. 1 of Wan) would lead one of ordinary skill in the art to the undeniable conclusion that Wan's base station 104 and mobile unit 106 are not similar devices. There is no discussion in Wan that the base station 104 and mobile unit 106 have similar colors and/or materials. Even if there was such a discussion, the color and material composition of the devices are of no particular significance to the invention or its operation.

Moreover, even if Wan's base station and mobile device were similar devices as incorrectly alleged by the Final Rejection, claims 1 and 10 would still not be anticipated by Wan. In particular, use of the Final Rejection's (incorrect) interpretation would require that Wan's mobile device can determine the values of the property being measured by base stations (i.e., the alleged similar devices) for Wan to anticipate claims 1 and 10.

However, Wan does not suggest this claim limitation. Wan's mobile device only measures the strength of signals received from the base stations, and indeed the rate of change of such properties. There is no disclosure or suggestion that Wan's base stations transmit, to his mobile device, the results of measurements the base stations have themselves taken. Indeed, there is no disclosure or suggestion in the cited passages of Wan that the base stations taking any such measurements in the first place. In Wan, the base stations play no part in the process he describes other than to generate the signals which are scanned by the mobile device. In particular, Wan's reference to "adjusting the scanning rate of the neighbouring cells" (paragraph [0086] and Figure 5, step 530) clearly refers to a process performed by the mobile device, in which it changes the rate at which it scans the cells, and not a process performed by the cells themselves.

The mobile device of Wan therefore uses no measurements other than those it has generated itself. Wan therefore fails to disclose determination of values of the property that have been measured by other devices, as required by claims 1 and 10. This is the case regardless of whether these claims are interpreted such that those other devices are similar to each other.

Again, Wan's base stations do not transmit any measured values the base stations have themselves taken. The base stations merely transmit a signal whose strength can be measured. Wan's mobile unit does not receive any values of signal strength from elsewhere, and therefore cannot process any values other than those it has determined for itself. For the purposes of the process described in Wan, the base stations' transmissions are simply part of the environment in which the mobile unit finds itself.

Wan's system is concerned with adjusting the periodicity at which measurements of signal strength are taken, according to the rate at which such measurements are changing. Such changes

occur because the measurement point is moving, and the adjustment of periodicity is done to conserve power in the internal power supply. The fixed base stations in a cellular telephone network do not need to determine how fast they are moving, because they are indeed fixed. The base stations also usually have an external power supply. The base stations therefore do not need to perform the same processes as Wan's mobile devices do, and indeed there is no suggestion that they do so. Indeed, if the signal strength were to vary or to be intermittent, it would be difficult for the mobile units to make reliable contact with them.

Wan therefore fails to disclose "determining the values of the property being measured by devices similar to said sensor device" as required independent claim 1 and similar limitations of independent claim 10. The Final Rejection (page 2) alleges that paragraph [0055] of Wan discloses this claim limitations. This allegation is incorrect. Paragraph [0055] merely discusses the determination of "the speed or rate of change of the received signal strength", and it is clear that the mobile device is making the measurements itself. It is not determining the values being measured by other devices by claims 1 and 10.

Claims 1 and 10 allows for adjusting the periodicity of measurement according to the rate at which a property is found to be changing (e.g., over an area or a volume). For this to be achieved, contemporaneous measurements made at nearby locations are needed. This requires multiple devices to exchange data with each other, to determine the spatial distribution of the property being measured. Wan does not permit this. Indeed, since the purpose of Wan's measurements is to determine whether the device should hand over from one base station to another, the measurements made by other mobile devices are irrelevant to it.

The distinction between spatial and temporal variation of signal strength is slightly blurred in Wan because, relative to a fixed reference point, the signal strength does not vary with time but does vary in space. Because the mobile device is indeed mobile, the signal strength that it detects will vary with time. However, at any given moment, it has no direct knowledge of the current signal strength anywhere other than its present location. Whether one considers this as measuring a time-variant property or a space-variant property, depends on your frame of reference, but Wan's device cannot make use of any measurements other than those it has made itself, wherever the sensor happened to be at each moment a measurement was made. The present invention, by comparing both the rate of change of a property it has measured itself and values of the same property measured elsewhere, can determine how the property is varying in both time and space.

The Final Rejection (page 2) alleges that paragraph [0086] of Wan discloses " adjusting the periodicity of measurement according to the values the sensor has measured and the measured values received from the [other] devices similar to said sensor device," as required by independent claim 1

and similar limitations of claim 10. However, as described above, Wan's device works autonomously. The periodicity of measurement depends only on the previous measurements made by that device.

The Final Rejection appears to be relying on the statement in paragraph [0086] that "the mobile unit proceeds to state 530 to adjust the scanning rate of neighboring cells based upon the .... measurements obtained in state 520" to infer that the measurements made by one mobile unit are used to control the rate at which another mobile unit performs the scanning function. Taken out of context, the expression "adjust the scanning rate of neighboring cells" could be taken to mean either the rate at which neighboring cells perform the scanning function, or the rate at which the subject cell scans its neighbors. The Final Rejection's position relies on the first interpretation, but the context, and in particular the following paragraphs [0087]-[0089] of Wan, make it clear that the latter is the correct. For example, paragraph [0089] states "The mobile unit 106 [i.e. the same one that took the measurement] stores the new scanning rate and begins operation under the new scanning rate." There is no suggestion that values measured by one device are used to control the operation of another.

The Final Rejection fails to establish that claims 2-3, 11-12 and 18-20 are "obvious" under 35 U.S.C. §103 over Wan (U.S. '024).

For the reasons already noted above with respect to parent claim 1 or 10, Wan fails to teach or suggest the limitations of dependent claims 2-3, 11-12 and 18-20.

Moreover, dependent claim 19 requires "wherein each of the sensor device and the devices similar to said sensor device is a mobile device" and dependent claim 20 requires "wherein each of the plurality of sensor devices is a mobile device." The Final Rejection alleges that "Wan is silent with regards to the base stations being mobile base stations." Applicant disagrees with this allegation. For example, Wan explicitly discloses the base station 104 broadcasting and receiving data within a cell 108, which has a roughly hexagonal geographic region having a radius of up to 35 kilometers or more, in compliance with the Global System for Mobile communications (GSM) standard. See paragraphs [0032]-[0033] of Wan. These disclosures of Wan clearly indicate that Wan's base stations are not mobile as alleged by the Final Rejection. Even the depiction of base station 104 in Fig. 1 (reproduced above -- showing a towering antenna) in Wan suggests that it is not mobile (or silent with respect to being mobile or not) as alleged by the Final Rejection.